Senate Bill No. 1347

Passed the Senate August 30, 2006

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Secretary of the Senate

Passed the Assembly August 28, 2006

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Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2006, at _____ o'clock ___M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 25209.11, 25209.12, 25209.13, 25209.14, and 25209.16 of, and to add Sections 25209.18 and 25209.19 to, the Health and Safety Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1347, Machado. Water: solar evaporators.

(1) Existing law requires the State Water Resources Control Board (state board), on or before April 1, 2003, to adopt emergency regulations that establish minimum requirements for the design, construction, operation, and closure of a solor evaporator, as defined. Existing law requires that the regulations include specified requirements. Existing law prohibits a California regional water quality control board (regional board), on and after January 1, 2008, from issuing a written notice of authority to operate a solar evaporator, as specified. Existing law regulates the operation of solar evaporators, and defines terms for that purpose.

This bill would delete the date reference for the state board's adoption of emergency regulations for a solor evaporator, revise the requirements required to be included in the regulations, and make related changes with respect to the adoption or amendment of regulations relating to solar evaporators. The bill would delete the prohibition of a regional board, on and after January 1, 2008, issuing a written notice of authority to operate a solar evaporator, as specified. The bill would revise the definition of certain terms for purposes of regulation of solar evaporators.

(2) Existing law requires a person who intends to operate a solar evaporator to file a notice of intent with the regional board, using a form prepared by the regional board. Existing law requires that the form require the person to provide specified information.

The bill would revise the information that the person is required to provide.

(3) Existing law provides specified timeframes and procedures for the regional board to approve or disapprove a notice of intent

to operate a solar evaporator, and to approve or disapprove operation of a solar evaporator.

The bill would revise and recast those timeframes and procedures.

(4) Existing law requires a person operating a solar evaporator to annually submit groundwater monitoring data and any other information that the regional board deems necessary to ensure compliance with specified requirements. Existing law requires a regional board to adopt a schedule for the submission of that data and information.

The bill, instead, would require a person operating a solar evaporator to submit to the regional board, in April and October of each year, specified information related to waterflow, water quality, and groundwater monitoring. The bill would require the waterflow and water quality data to be collected bimonthly and the groundwater monitoring data to be collected semiannually, except as specified.

(5) The bill would require a person operating a solar evaporator as specified to manage the collection and removal of evaporite salt from the solar evaporator, as specified.

(6) The bill would authorize an aggrieved person, within 30 days of any action or failure to act by a regional board as specified, to petition the state board to review the action or failure to act, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 25209.11 of the Health and Safety Code is amended to read:

25209.11. For purposes of this article, the following terms have the following meanings:

(a) “Agricultural drainage water” means surface drainage water or percolated irrigation water that is collected by subsurface drainage tiles placed beneath an agricultural field.

(b) “On-farm” means land within the boundaries of a property or geographically contiguous properties, owned or under the control of a single owner or operator or a publicly organized land-based agency, that is used for the commercial production of agricultural commodities and that contains an integrated on-farm drainage management system and a solar evaporator.

(c) “Integrated on-farm drainage management system” means a facility for the on-farm management of agricultural drainage water that does all of the following:

(1) Reduces levels of salt and selenium in soil by the application of irrigation water to agricultural fields.

(2) Collects agricultural drainage water from irrigated fields and sequentially reuses that water to irrigate successive crops until the volume of residual agricultural drainage water is substantially decreased and its salt content significantly increased.

(3) Discharges the residual agricultural drainage water to an on-farm solar evaporator for evaporation and appropriate salt management.

(4) Eliminates discharge of agricultural drainage water to evaporation ponds and outside the boundaries of the property or properties that produces the agricultural drainage water and that is served by the integrated on-farm drainage management system and the solar evaporator.

(d) “Publicly organized land-based agency” means a resource conservation district, as described in Division 9 (commencing with Section 9001) of the Public Resources Code, an irrigation district, as described in Division 11 (commencing with Section 20500) of the Water Code, any other district established pursuant to the Water Code whose operations may include managing agricultural irrigation or drainage, or a joint powers authority formed for the purpose of managing agricultural drainage or salt.

(e) “Regional board” means a California regional water quality control board.

(f) “Solar evaporator” means an on-farm area of land and its associated equipment that meets all of the following conditions:

(1) It is designed and operated to manage agricultural drainage water discharged from the integrated on-farm drainage management system.

(2) The area of the land that makes up the solar evaporator is equal to, or less than, 2 percent of the area of the land that is managed by the integrated on-farm drainage management system.

(3) Agricultural drainage water from the integrated on-farm drainage management system is discharged to the solar evaporator by timed sprinklers or other equipment that allows the

discharge rate to be set and adjusted as necessary to avoid standing water within the solar evaporator or, if a water catchment basin is part of the solar evaporator, within that portion of the solar evaporator that is outside the basin.

(4) The combination of the rate of discharge of agricultural drainage water to the solar evaporator and subsurface tile drainage under the solar evaporator provides adequate assurance that constituents in the agricultural drainage water will not migrate from the solar evaporator into the vadose zone or waters of the state in concentrations that pollute or threaten to pollute the waters of the state.

(g) "State board" means the State Water Resources Control Board.

(h) "Water catchment basin" means an area within the boundaries of a solar evaporator that is designated to receive and hold any water that might otherwise be standing water within the solar evaporator. The entire area of a water catchment basin shall be permanently and continuously covered with netting, or otherwise designed, constructed, and operated to prevent access by avian wildlife to standing water within the basin.

SEC. 2. Section 25209.12 of the Health and Safety Code is amended to read:

25209.12. The state board, in consultation, as necessary, with other appropriate state agencies, shall adopt or amend emergency regulations that establish minimum requirements for the design, construction, operation, and closure of a solar evaporator. The regulations shall include, but are not limited to, requirements to ensure all of the following:

(a) The operation of a solar evaporator does not result in a discharge of on-farm agricultural drainage water outside the boundaries of the area of land that makes up the solar evaporator.

(b) (1) The solar evaporator is designed, constructed, and operated so that, under reasonably forseeable operating conditions, the discharge of agricultural water to the solar evaporator does not result in standing water or drift of salt spray, mist, or particles outside the boundaries of the solar evaporator to the extent that drift constitutes a nuisance condition.

(2) Notwithstanding paragraph (1), a solar evaporator may be designed, constructed, and operated to accommodate standing water, if it includes a water catchment basin.

(3) The board may specify those conditions under which a solar evaporator is required to include a water catchment basin to prevent standing water that would otherwise occur within the solar evaporator.

(c) Avian wildlife is adequately protected. In adopting regulations pursuant to this subdivision, the state board shall do the following:

(1) Consider and, to the extent feasible, incorporate best management practices recommended or adopted by the United States Fish and Wildlife Service.

(2) Establish guidelines for the authorized inspection of a solar evaporator by the regional board pursuant to Section 25209.15. The guidelines shall include technical advice developed in consultation with the Department of Fish and Game and the United States Fish and Wildlife Service that may be used by regional board personnel to identify observed conditions relating to the operation of a solar evaporator that indicate an unreasonable threat to avian wildlife.

(d) Constituents in agricultural drainage water discharged to the solar evaporator will not migrate from the solar evaporator into the vadose zone or the waters of the state in concentrations that pollute or threaten to pollute the waters of the state.

(e) Adequate groundwater monitoring and recordkeeping is performed to ensure compliance with this article.

(f) Salt isolated in a solar evaporator shall be managed in accordance with all applicable laws and shall eventually be harvested and sold for commercial purposes, used for beneficial purposes, or stored or disposed in a facility authorized to accept that waste pursuant to this chapter or Division 30 (commencing with Section 40000) of the Public Resources Code.

SEC. 3. Section 25209.13 of the Health and Safety Code is amended to read:

25209.13. (a) A person who intends to operate a solar evaporator shall, before installing the solar evaporator, file a notice of intent with the regional board, using a form prepared by the regional board. The form shall require the person to provide all of the following:

(1) The location of the solar evaporator.

(2) The design of the solar evaporator and the equipment that will be used to operate it.

(3) The maximum anticipated rate at which agricultural drainage water will be discharged to the solar evaporator.

(4) The anticipated rate of accumulation of evaporite salt in the solar evaporator and the anticipated period of time before the salt needs to be removed to ensure the continued effective operation of the evaporator.

(5) Plans for operating the solar evaporator in compliance with this article, including a plan to collect and remove evaporite salt to ensure the continued effective operation of the evaporator.

(6) Groundwater monitoring data that are adequate to establish baseline data for use in comparing subsequent data submitted by the operator pursuant to this article.

(7) Weather data and a water balance analysis sufficient to assess the likelihood of standing water occurring within the solar evaporator.

(8) A brief description of any documents or reports required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), with the appropriate document or report, if required, included as an attachment to the form.

(9) Any other information required or authorized by regulation.

(b) The regional board shall, within 30 calendar days after receiving the notice submitted pursuant to subdivision (a), review the notice of intent for its completeness, inspect, if necessary, the site where the proposed solar evaporator will be located, and notify the operator of whether the notice of intent is complete. If the regional board determines that the notice of intent is not complete, the regional board shall issue a written response to the applicant identifying the reason why it is not complete. If the regional board determines that the notice of intent is complete, the regional board shall notify the operator in writing that the notice of intent is complete.

(c) A person who receives a written notice of completeness pursuant to subdivision (b) shall, before operating the installed solar evaporator, request the regional board to conduct a compliance inspection of the solar evaporator. Within 30 days after receiving a request, the regional board shall inspect the solar evaporator to determine whether it complies with this article. If the regional board finds that the solar evaporator does not

comply with this article, the regional board, within 140 days after the inspection, shall issue a written response to the applicant identifying the reasons for noncompliance. Except as provided in subdivision (e), if the regional board finds that the solar evaporator complies with the requirements of this article, the regional board, within 30 days after the inspection, shall issue a written notice of authority to operate to the operator of the solar evaporator. The regional board may include in the authority to operate any associated condition that the regional board deems necessary to ensure compliance with the purposes and requirements of this article.

(d) A person shall not commence the operation of a solar evaporator before one of the following occurs:

(1) The person receives a written notice of authority to operate the solar evaporator pursuant to this section.

(2) The expiration of 140 days after the solar evaporator is inspected pursuant to subdivision (c), and the person has not received a written response from the regional board, identifying reasons for noncompliance.

(e) The regional board shall review an authority to operate issued by the regional board pursuant to this section every five years. The regional board shall renew the authority to operate, unless the regional board finds that the operator of the solar evaporator has not demonstrated compliance with the requirements of this article.

SEC. 4. Section 25209.14 of the Health and Safety Code is amended to read:

25209.14. (a) A person operating a solar evaporator shall submit to the regional board, in April and October of every year, all of the following information:

(1) Bimonthly waterflow data taken immediately prior to discharge to the solar evaporator.

(2) Bimonthly water quality data, as required by the regional board, taken immediately prior to discharge to the solar evaporator.

(3) Semiannual groundwater monitoring data taken from an area in the vicinity of the solar evaporator, as approved by the regional board. Groundwater shall be monitored for salts, selenium, and other elements, as determined by the board, that

could adversely affect avian wildlife or beneficial uses of adjacent groundwater.

(b) Notwithstanding subdivision (a), the regional board may do either of the following regarding data collected pursuant to paragraphs (1) and (2) of subdivision (a):

(1) Reduce the data collection schedule two years after data is submitted pursuant to subdivision (a), if the regional board determines that discharge to the solar evaporator has been adequately characterized.

(2) Increase the data collection schedule, if the regional board determines that changes in monitoring results or other changes in the operation of the solar evaporator require more frequent data collection.

SEC. 5. Section 25209.16 of the Health and Safety Code is amended to read:

25209.16. (a) For the purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including Section 11349.6 of the Government Code, the adoption or amendment of the regulations required to be adopted pursuant to this article is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(b) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted or amended by the state board pursuant to this article shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until repealed by the state board.

SEC. 6. Section 25209.18 is added to the Health and Safety Code, to read:

25209.18. (a) A person operating a solar evaporator pursuant to a valid notice of authority to operate shall, consistent with subdivision (f) of Section 25209.12, manage the collection and removal of evaporite salt from the solar evaporator as described in the plan prepared pursuant to paragraph (5) of subdivision (a) of Section 25209.13.

(b) If the regional board subsequently determines that accumulated salt needs to be collected and removed from a solar evaporator at a time, or in a manner, that differs from the plan

prepared pursuant to paragraph (5) of subdivision (a) of Section 25209.13, the regional board shall notify the operator in writing and describe the reasons for its determination.

(c) An operator of a solar evaporator who receives a notice pursuant to subdivision (b) may appeal the determination of the regional board. The appeal shall include a response, prepared by an independent registered professional civil engineer or agricultural engineer, to the findings in the notice.

SEC. 7. Section 25209.19 is added to the Health and Safety Code, to read:

25209.19. Within 30 days of an action or failure to act by a regional board pursuant to this article, an aggrieved person may petition the state board to review that action or failure to act. The petition and all other rules and procedures governing the petition shall be the same as in Section 13320 of the Water Code.

Approved _____, 2006

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Governor